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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of	:	Kennedy, Ronald G.
Serial No.	:	09/474,418
Filed	:	December 29, 1999
For	:	System and Method For Remote Servicing of In-Field Product
Group Art No.	:	2143
Examiner	:	Vaughn, W.

CERTIFICATION UNDER 37 CFR 1.8(a) and 1.10

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REQUEST FOR PRE-APPEAL BRIEF CONFERENCE

Dear Sir:

A Notice of Appeal is filed concurrently herewith. Applicant hereby requests pre-appeal review of the final rejection in the above-identified application. No amendments are being filed with this request. The review is requested for the reasons set forth below.

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REMARKS

Claims 1-24 are currently pending in the present application. In the Final Office Action mailed October 06, 2005, (hereinafter FOA) the Examiner rejected claims 1-24 under 35 U.S.C. §130(a) as being unpatentable over Jago et al., (UPS 5,938,607) in view of Wood et al. (USP 5,715,823). The Examiner also rejected claims 1-24 under 35 U.S.C. §103(a) as being unpatentable over Slayton et al. (USP 6,440,071) in view of Jago et al. and further in view of Friz et al. (USP 5,786,994). Claims 1-24 are also provisionally rejected under judicially created doctrine of double patenting over claims 1-44 of Application No. 09/199,506.

In addressing the Response of November 9, 2005, the Examiner reduced Applicant's remarks directed to the patentability of the pending claims over the art of record to a three-line clause alleging that "Applicant argues that Jago, Wood, Friz do not disclose an in-field product at a customer site that is not readily capable of direct communication with the on-line center." FOA, pg. 13, ¶¶36, 37. The Examiner further maintained that "it is the position of the Examiner that the Applicant is arguing a feature that one of ordinary skill had deemed obvious." The Examiner further stated that "[i]t would have been obvious to one of ordinary skill in the networking art at the time the invention was made to have allowed for the laptop to be able to transmit and receive information from the on-line center when connect [sic] to the ultrasound system." Id. The Examiner queried, "Is applicant claiming that the novelty of their invention the ability of one system to serve as interface for another system when the ultra [sic: ultrasound system] is not presently connected to the system?" and "if so, the Examiner strongly disagrees with this interpretation." Id. No "interpretation" is required. The claims do not, as the Examiner has apparently reduced the interpretation thereof, merely call for "the ability of one system to serve as an interface when an ultrasound is not presently connected to the system".

The claims call for a specific set of elements and specify the association of those elements. The Examiner has merely removed each of the individual elements from the context of the claims and alleged that those elements are disclosed in the art of record and the claimed elements and the claimed association of the elements would have been obvious. Such a conclusion requires complete disregard for all that is disclosed in the references and is contrary to the procedures set forth in the MPEP. In essence, the Examiner has reduced the claims to what the Examiner thinks is the "gist of the invention." This is an improper interpretation and therefore is properly overruled by the Panel.

MPEP §2143 requires that to establish a prima facie case of obviousness, the prior art reference (or references when combined) must, in part, teach or suggest all the claim limitations. See MPEP §2143. As set forth herein below, the Examiner's combinations of references fail to satisfy this requirement.

The Examiner rejected claims 1-24 under 35 U.S.C. § 103(a) as being unpatentable over Jago et al. in view of Wood et al and stated that Jago et al. "teaches a system that includes an HTTP server,

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and a communication means ... for communicating electronic messages to and from the manufacturer" and that "Jago does not explicitly disclose at least one online center having access to service software at a centralized facility so as to service in-field product remotely." FOA, pgs. 2-3, ¶4. The Examiner further states that "Wood discloses at least one on-line center having access to service software at a centralized facility so as to service in-field product remotely." Id. pg. 3, ¶5.

Claim 1 calls for, in part, a remote servicing communication system for an in-field product at a customer site wherein the in-field product is not readily capable of direct communication with an online center. That is, the in-field product is not constructed for direct communication with the online center. Contrary to the Examiner's assertion that "Jago discloses a remote servicing communications system...[having] at least one on-line center having access to service software at a centralized facility so as to service in-field product an in-field product at a customer site that is not readily capable of direct communication with the on-line center"; Jago et al. states that "[i]t should be possible for the manufacturer to deliver bulletins and reports with this type of information directly to the ultrasound system, and for the operator to quickly obtain this type of information if it is not present on the ultrasound system." Jago et al., col. 2, lns. 14-19. Jago et al. further states that "[t]he ultrasound system 10 includes a HyperText Transfer Protocol (HTTP) server 30" and that "[t]he server 30 makes the diagnostic information of the ultrasound system 10 available to users connected to access the ultrasound system thought a communication network, such as the network shown in FIG. 2." Jago et al., col. 3, lns. 19-30. That is, ultrasound system 10 is readily capable of direct communication with the on-line center via server 30. To conclude otherwise requires complete disregard of that which is expressly disclosed in Jago et al.

Likewise, Wood et al., which is the parent of the continuation-in-part Jago et al., states that "[i]n accordance with the principles of the present invention the ultrasound system of FIG. 1 further includes a HyperText Transport Protocol (HTTP) server 30" and that the "[t]he HTTP server is connected to access ultrasonic images and report from the storage medium 24, and makes the system's images and reports accessible to a personal computer, terminal, or workstation at a remote location." Wood et al., col. 3, lns. 18-24. Wood et al. further states that "the server 30 makes the diagnostic information of the ultrasound system 10 available to users connected to access the ultrasound system through the communication network 340." Wood et al., col. 3, lns. 26-29. That is, Wood et al. expressly discloses that ultrasound system 10 is readily capable of direction communication with an on-line center, albeit not a service center but an image library.

Claim 1 calls for, in part, an in-field product at a customer site that is not readily capable of direct communication with an on-line center. As both Jago et al. and Wood et al. disclose an ultrasound system which includes a server which "makes the system's images and reports accessible to a personal computer, terminal, or workstation at a remote location", the systems disclosed in Wood

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et al. and Jago et al. are systems readily capable of direct communication with an on-line center and therefore cannot be systems which are not readily capable of direct communication with an on-line center as called for in claim 1.

Claim 1 further calls for a first communications link connecting a portable service interface to the on-line center and a second communication link connecting the portable service interface with the in-field product to complete a connection between the in-field product and the on-line center through the portable service interface. The Examiner asserts that "Wood discloses at least one on-line center having access to service software at a centralized facility so as to service in-field product remotely (Wood teaches a cable is connected from the serial port of the laptop computer to the serial port on the ultrasound system as well as further teaching new techniques for qualifying and testing such software upgrades for ultrasonic diagnostic systems worldwide) [citations omitted]". FOA, pg. 3, ¶5. The Examiner's analysis fails to identify the elements of the claim with respect to the art of record. Such a comparison cannot be made because the elements are simply not there.

In addition to server 30 configuring the in-field product for direct communication with the on-line center, Wood et al. further discloses that "the Perform System Diagnostics functions can be performed by an on-site serviceman using a laptop computer." Wood et al., col. 11, lns. 10-12. Wood et al. further states that "when the serviceman is with the ultrasound system, there is no need for modem interconnection; the network link can be made directly" and that "in this case a cable is connected from the serial port 131 of the laptop computer (FIG. 3) to the serial port 31 of the ultrasound system (FIG. 2)." Wood et al., col. 11, lns. 12-16. Wood et al. continues stating that "access and interrogation of the ultrasound system by the repairman proceeds as described above, but at the much faster data rate of a direct network connection" and that "a visiting serviceman can use his laptop computer to perform system diagnostics, check error logs, verify configurations and software levels, and other system maintenance and repair activities." Wood et al., col. 11, lns. 17-24.

In the configuration of Wood et al., when a serviceman uses a laptop to service the in-field device, there is a single communications link between the laptop and the in-field product. Data is exchanged via the direct network connection; i.e. the physical connection between the laptop and the in-field product. As such, there is no connection between the in-field product and the on-line center through a portable service interface as called for in claim 1. Simply, the repairman has physically brought the service to the in-field device. Accordingly, Wood et al. and Jago et al. fail to teach, or even suggest, a remote servicing communication system having a first communications link connecting a portable service interface to an on-line center and a second communications link connecting the portable service interface with the in-field product to complete a connection between the in-field product and the on-line center through the portable service interface as called for in claim 1.

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Claim 10 calls for, in part, a method of providing remote service communication between an on-line center and an in-field product wherein the in-field product is not readily capable of direct communication with the online center. Claim 10 further calls for electrically connecting the on-line center with a portable service interface, accessing data from the in-field product with the portable service interface, and interfacing between the on-line center and the in-field product with the portable service interface. As argued above with respect to claim 1, the systems of both Jago et al. and Wood et al. are readily capable of direct communication with the on-line center. As explained, Jago et al. is simply a CIP of Wood et al. Neither teaches, or even suggests, the process called for in claim 10.

Similarly, claim 21 also defines a method of servicing an in-field product not readily capable of direct communication with the remote on-line center. The method includes selecting at least one of (A) interfacing the in-field product with the on-line center through the portable service interface to conduct a diagnostic evaluation of the in-field product and (B) downloading information to the in-field product from the on-line center through the portable service interface. No such servicing method is disclosed in the art of record. As argued above, the art of record fails to teach or suggest such a servicing method. Wood et al. also discloses a system wherein the in-field product is readily capable of direct communication with a remote on-line center. Wood et al. further discloses that the system disclosed therein communicates with a service provided via (1) an on-line support connection directly between the in-field product and the on-line center or (2) a laptop computer directly connected to the in-field product. Wood et al. does not disclose a servicing method including providing a portable service interface having software for communication with an on-line center, connecting the portable service interface to the in-field product, and electrically connecting the on-line center with the portable service interface as called for in claim 21. Jago et al., a CIP of Wood et al. similarly does not disclose a system as called for in the present claims. Jago et al. explicitly states that it is possible "for the manufacturer to deliver bulletins and reports ... directly to the ultrasound system...." Jago et al. col. 2, ln. 14-18. That is, the system of Jago et al., is clearly disclosed as readily capable of direct communication with a manufacturer. The conclusion that Jago et al. discloses a system as presently claimed is irreconcilable with the express disclosure of Jago et al.

At least for those reasons set forth above, since each and every element called for in the present claims is not taught, or even suggested, in the combination of Jago et al and Wood et al., Applicant believes that the Examiner applied incorrect law in rejecting the claims and therefore this Request is proper. Applicant respectfully requests the Panel find the claims patentably distinct over the art cited.

The Examiner next rejected claims 1-24 under 35 U.S.C. §103(a) as being unpatentable over Slayton et al., Jago et al., in view of Friz et al. FOA pg. 10, ¶30. Applicant has previously disqualified Slayton et al. as prior art based upon the evidence provided with the 37 C.F.R. §1.131

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Declaration filed July 20, 2004 and yet the present claims remain rejected thereover. Having previously disqualified the reference as prior art, any rejection relying thereon is clearly improper. Furthermore, Applicant disagrees with the assertion that which is called for in the present claims is taught, or even suggested, in the combination of Jago et al. in view of Friz et al. with or without Slayton et al. The previous need to include Slayton et al. with Jago et al. and Fritz et al. (Office Action of December 2, 2004) clearly indicates that the same rejection without Slayton et al. is without merit and unsupportable. Furthermore, upon consideration of the above remarks and citations to Jago et al., the Examiner's interpretation of that which is disclosed in Jago et al. is not supported by the reference.

In light of the foregoing, Applicant respectfully believes that the present application is in condition for allowance. Accordingly, Applicant requests withdrawal of the provisional double patenting rejection and timely issuance of a Notice of Allowance for claims 1-24.

Applicant appreciates the Panel's consideration of these Remarks and cordially invites the members of the Panel to call the undersigned, should any matter remained unresolved.

Respectfully submitted,



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